

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JEREMY WOLFSON,

Plaintiff,

v.

BANK OF AMERICA, NATIONAL ASSOCIATION, its successors in interest and/or Assigns; MTC FINANCIAL INC. d/b/a TRUSTEE CORPS; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; MERSCORP HOLDINGS, INC.; MAROON HOLDING, LLC; INTERCONTINENTAL EXCHANGE, INC.; FIRST MAGNUS FINANCIAL CORPORATION, an Arizona Corporation; and DOES #1-10, inclusive,

Defendants.

No. 3:17-cv-06064-BHS

DEFENDANT MTC FINANCIAL INC. d/b/a TRUSTEE CORPS' MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:

JUNE 12, 2020

I. INTRODUCTION AND RELIEF REQUESTED

This case involves an April of 2007 mortgage loan to Plaintiff Jeremy Wolfson (“Wolfson”). Defendant Bank of America, N.A. (“BANA”) services the loan. Wolfson stopped making payments on the loan in July of 2016. Defendant MTC Financial Inc., d/b/a Trustee Corps (“MTC”) was appointed successor trustee and a foreclose sale was commenced. The foreclosure sale, however, was not completed. After the foreclosure sale was started, Wolfson commenced the above-captioned litigation asserting the following nine (9) claims against MTC and other defendants: (1) quiet title, (2) violations of the Federal Debt Collection Practices Act (“FDCPA”), (3) defamation, (4) declaratory judgment, (5) cancellation of instrument, (6)

DEFENDANT MTC FINANCIAL INC. d/b/a TRUSTEE CORPS' MOTION FOR SUMMARY JUDGMENT
(NO. 3:17-cv-06064-BHS) - 1

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1 replevin, (7) breach of the implied duty of good faith and fair dealing, (8) violations of
 2 Washington Deed of Trusts Act (“DTA”), and (9) violations of the Washington Consumer
 3 Protection Act (“CPA”).¹ Yet, Wolfson has not, and cannot, provide any evidence whatsoever to
 4 support any of his claims. At his deposition on January 17, 2020, Wolfson repeatedly testified
 5 that he is unaware of any information that supports his claims against MTC. And, Wolfson has
 6 failed to produce any documents to support any his claims. Because he is unable to provide
 7 evidence to support his claim, all of Wolfson’s claims should be dismissed as a matter of law.

8 BANA has filed a motion for summary judgment, docket number 83, to dismiss the
 9 claims for replevin and defamation. Wolfson’s claims for defamation and replevin against
 10 BANA are plead identically against MTC. Consequently, the legal arguments supporting
 11 dismissal of Wolfson’s claims for replevin and defamation asserted by BANA apply to MTC.
 12 MTC hereby adopts the arguments and legal authority set forth by BANA. Accordingly, all of
 13 Wolfson’s claims against MTC should be dismissed with prejudice pursuant to Fed. R. Civ. P.
 14 56.

15 II. FACTUAL AND PROCEDURAL BACKGROUND

16 A. Loan History.

17 MTC adopts and fully incorporates the Loan History section set forth in BANA’s motion
 18 for summary judgment.²

19 B. MTC’s Statement Regarding Wolfson’s Deposition Testimony.

20 MTC adopts and fully incorporates the Wolfson’s Deposition Testimony section of
 21 BANA’s motion for summary judgment.³ In addition, MTC sets forth its own statement of
 22 Wolfson’s deposition testimony.

23 Wolfson repeatedly testified that he is unaware of any information that supports his
 24 claims against MTC:

25
 26 ¹ Wolfson submitted an Amended Complaint on June 22, 2018 (Dkt #36). The references to complaint or Complaint
 in this motion refer to the operative complaint in this case.

27 ² Dkt #83, page 3, lines 3-22.

³ Dkt #83.

1 Q. Why did you name my client, MTC Financial dba Trustee Corps, as a
2 defendant in your lawsuit with Bank of America?

3 A. **I don't know.**

4 Q. Do you believe that MTC Financial did something that caused you to name
5 them in this lawsuit?

6 A. **I'm unsure.**

7 Q. Is there any way you could figure out why you included them in this lawsuit?

8 A. **I don't know.**⁴

9 ...

10 Q. Why did you list my client MTC Financial dba Trustee Corps as a defendant in
11 this case?

12 A. **I don't recall.**

13 Q. What facts did you rely upon to list them as a defendant in this case?

14 A. **I'm not sure.**

15 Q. What claims are you making against them?

16 A. **I'm not sure.**

17 Q. What facts did you rely upon to support your claim against them?

18 A. **I don't know.**

19 Q. What witnesses do you know of to support your position?

20 A. **I'm not sure.**

21 Q. Are there any witnesses that you know of?

22 A. **I don't know.**

23 Q. Why don't you know?

24 A. **I'm unsure.**⁵

25 Even though Wolfson filed the complaint and amended complaint concerning the
26 Property⁶—which he asserts owning since 2007⁷—at his deposition, Wolfson continually
27 testified that he was not aware that he had any interest in the Property. Wolfson testified as
follows:

28 Q. Do you own property located at 16208 132nd Avenue East in Puyallup,
29 Washington?

30 A. **I don't know. I'm unsure.**

31 Q. Did you name MTC Financial, Inc., dba Trustee Corps in your lawsuit that you
32 filed?

33 A. **I don't know.**⁸

34 ...

35 Q. Do you believe that to be your address?

36 A. **I'm unsure.**

25 ⁴ Declaration of Michael S. DeLeo (“DeLeo Decl.”), Ex. 1, Wolfson Deposition at 20:11-20:20.

26 ⁵ DeLeo Decl., Ex. 1, Wolfson Deposition at 34:10-35:2.

27 ⁶ The “Property” is commonly known as 16208 132nd Avenue East, Puyallup (See Amended Complaint, Dkt #36 at paragraph 64).

⁷ Amended Complaint, Dkt #36 at paragraph 73.

⁸ DeLeo Decl., Ex. 1, Wolfson Deposition at 15:24-16:4.

1 Q. So the address listed there as 16208 132nd Avenue East, Puyallup,
2 Washington, it's the same address you listed on Exhibit 1, your complaint?

3 A. **I don't recall listing anything.**

4 Q. Do you believe this to be your address, this address listed here under your
5 name on Exhibit 6?

6 A. **I'm unsure.**

7 Q. Why are you unsure?

8 A. **I'm unsure.**

9 Q. You have to explain that to me.

10 A. **In what sense?**

11 Q. It's either your address or it's not. If it's not your address, I would like you to
12 explain why you 15 don't think it's your address.

13 A. **I'm unsure.**

14 Q. I understand that you're unsure. I want you to explain to me why you're not
15 sure?

16 A. **I don't know.**⁹

17 ...

18 Q. Do you recall obtaining -- purchasing the -- do you contend that the property
19 listed at 16208 132nd Avenue East in Puyallup, Washington, is your property?

20 A. **I'm uncertain.**

21 Q. Why?

22 A. **I don't know.**

23 Q. Do you own any real property?

24 A. **I am not sure, certain.**

25 Q. Why are you uncertain?

26 A. **I don't know.**¹⁰

27 Wolfson also was unable to testify regarding making payments due under the Note
secured by the Property.

Q. Do you agree that you haven't been making payments on your loan to Bank of
America since August 1st, 2016?

A. **I'm unsure.**

Q. You don't know if you've made payments or not?

A. **I'm unsure.**

Q. How would you figure it out?

A. **I don't know that information.**

Q. You don't know whether or not you made a payment on your loan?

A. **No. I'm unclear.**

Q. And you don't know how you would figure that out?

A. **I'm unsure.**

Q. So you don't have any way to dispute that these payments haven't been made?

A. **I'm unsure.**

⁹ DeLeo Decl., Ex. 1, Wolfson Deposition at 27:25-28:19.

¹⁰ DeLeo Decl., Ex. 1, Wolfson Deposition at 57:15-57:24.

1 Q. Is there any way that you could be sure?

2 A. **I don't know.**¹¹

3 ...

4 Q. Do you have any evidence to support that payments were made on this loan
5 after July 1st, 2016?

6 A. **I'm unsure.**¹²

7 Wolfson was unable to provide evidence to support any of his claims.¹³ Wolfson
8 testified that he was unable to point to *any* evidence to support *any* of his claims against MTC.¹⁴
9 When counsel asked Wolfson about his defamation claims against MTC, Wolfson admitted that
10 he was unable to identify: (a) any false and misleading information that MTC published, and (b)
11 how his reputation was damaged in any way by the alleged defamation.¹⁵

12 Wolfson also testified that he could not identify any evidence to support his claim for
13 replevin:

14 Q. Turn to page 34, please. Paragraph 359 says, "The note being void or voidable
15 (for fraud and for other reasons) is the property of plaintiff but it is in the
16 possession of some defendant or its successor or assign or some unknown
17 party." Do you have any evidence to support that allegation?

18 A. **I'm uncertain.**

19 Q. Do you believe that the note is your property?

20 A. **I'm uncertain.**

21 Q. Do you believe the note is your personal property?

22 A. **I'm uncertain.**

23 Q. Do you believe that you own the note that was secured by the subject loan?

24 A. **I'm uncertain.**

25 Q. Do you have any evidence to support the allegation that the note has been
26 satisfied?

27 A. **I'm uncertain.**

28 Q. Do you have any evidence to support that you have paid off the note which
29 we've identified as Exhibit 12, that it has been paid in full?

30 A. **I am uncertain.**¹⁶

31 ¹¹ DeLeo Decl., Ex. 1, Wolfson Deposition at 19:18-20:10.

32 ¹² DeLeo Decl., Ex. 1, Wolfson Deposition at 64:12-64:14.

33 ¹³ For example, when asked why he listed a quiet title claim, Wolfson testified "I'm unsure." DeLeo Decl., Ex. 1,
34 Wolfson Deposition at 31:2-9.

35 ¹⁴ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

36 ¹⁵ DeLeo Decl., Ex. 1, Wolfson Deposition at 70:19-73:22.

37 ¹⁶ DeLeo Decl., Ex. 1, Wolfson Deposition at 73:22-74:19.

Based upon Wolfson’s own testimony, Wolfson has no evidence to support any of his claims against MTC. Wolfson was required, per the subpoena, to bring documents with him if he had any documents to support his claims.¹⁷ Wolfson produced only two pages of documents in response to the subpoena.¹⁸ This two-page document is titled “Documents Responsive to Defendant’s Request;” yet there is nothing contained in that document supporting Wolfson’s claims in any way. Instead, the two-page document merely contains links and excerpts from various websites. Because Wolfson has admitted through his testimony and failure to produce any supporting documents, this Court should grant MTC’s motion and dismiss all of Wolfson’s claims against MTC with prejudice.

III. STATEMENT OF ISSUES

1. Whether the Wolfson's claims against MTC for quiet title, declaratory judgment, cancellation of instruments, breach of duty of good faith, violation of Washington's DTA, violation of Washington's CPA, and violation of FDCPA should be summarily dismissed (a) because they are untenable as a matter of law and (b) the complete lack of any evidence whatsoever to support the claims?

2. Whether the Court should dismiss Wolfson's claims of defamation and replevin because they are unsustainable as a matter of law and there is no evidence to support the claims?

IV. EVIDENCE RELIED ON

This Motion relies upon the Declarations submitted in support of BANA's motion for summary judgment, BANA's Request for Judicial Notice, the Declaration of Michael S. DeLeo, the exhibits thereto, including the deposition testimony of Wolfson attached thereto, the Declaration of Alan Burton and the exhibits attached thereto, and the pleadings and files herein.

¹⁷ DeLeo Decl., Ex. 2.

¹⁸ DeLeo Decl., Ex. 1, Wolfson Deposition at 45:4-47:6, 49:24-50:25; Ex. 3.

V. ARGUMENT AND AUTHORITY

1. The Summary Judgment Standard.

Summary judgment should be granted when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”¹⁹ The party seeking summary judgment “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] . . . which it believes demonstrate the absence of a genuine issue of material fact.”²⁰ However, once the moving party makes this initial showing, the burden on summary judgment shifts to the nonmoving party, who must demonstrate the existence of a material issue of fact and “may not rely on the mere allegations in the pleadings in order to preclude summary judgment.”²¹ A “complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”²² Because Wolfson has a complete failure of proof on with regard to each of his purported claims, they fail as a matter of law and MTC’s motion for summary judgment should be granted.

2. Wolfson's Claims for (a) quiet title, (b) violations of the Federal Debt Collection Practices Act ("FDCPA"), (c) declaratory judgment, (d) cancellation of instrument, (e) breach of the implied duty of good faith and fair dealing, (f) violations of Washington Deed of Trusts Act ("DTA"), and (g) violations of the Washington Consumer Protection Act ("CPA") (collectively the "Dismissed Claims") should all be dismissed as a matter of law.

a. Wolfson's quiet title claim fails as a matter of law. A suit to quiet title is only properly brought against a "person claiming the title or some interest" in the affected parcel.²³ MTC is not claiming any interest in property. Rather, MTC is the trustee on a deed of trust with whatever rights are conveyed to it as trustee. Hence, as a matter of law there is nothing to quiet

¹⁹ Fed. R. Civ. P. 56(a).

²⁰ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986).

²¹ *T.W. Elec. Service v. Pacific Elec. Contractors*, 809 F.2d 626, 630 (9th Cir.1987). See also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (holding that “there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party”).

²² *Celotex*, 477 U.S. at 317. See also *Arthur v. Whitman Cty.*, 24 F. Supp. 3d 1024, 1028 (E.D. Wash. 2014) (noting that “summary judgment is required against a party who fails to make a showing sufficient to establish an essential element of a claim, even if there are genuine factual disputes regarding other elements of the claim”).

²³ RCW 7.28.010.

1 title against with regard to MTC and this Property. Furthermore, even if MTC has some right to
 2 the Property—which is does not, Wolfson cannot sustain a quiet title action because he cannot
 3 show that he satisfied his payment obligations under the Deed of Trust.²⁴ And, when asked,
 4 Wolfson testified that he was unable to point to *any* evidence to support *any* of his claims against
 5 MTC.²⁵ Consequently, Wolfson’s claim for quiet title fails and should be dismissed.

6 b. Wolfson’s FDCPA claim fails as a matter of law. Foreclosure proceedings do not
 7 constitute ‘debt collection’ within the meaning of the FDCPA.”²⁶ Additionally, “mortgagees and
 8 their assignees, servicing companies, and trustee fiduciaries are not included in the definition of
 9 ‘debt collector’ for purposes of the FDCPA.²⁷ Likewise, Courts have consistently found that
 10 lenders and trustees that engage in foreclosure are not “debt collectors” under 15 U.S.C. §
 11 1692a(6) because they are not seeking to collect money; instead, they are seeking to enforce a
 12 security interest (the DOT) to gain property.²⁸ Here, MTC is merely the trustee on the Deed of
 13 Trust and there is no sustainable FDCPA claim that Wolfson can assert it. Furthermore, Wolfson
 14 testified that he was unable to point to *any* evidence to support *any* of his claims against MTC.²⁹
 15 Thus, summary dismissal of his FDCPA claim is warranted.

16 c. Wolfson’s claim for declaratory relief fails as a matter of law. Although pled as a
 17 separate cause of action, declaratory relief is a remedy. Stated differently, declaratory relief is
 18 not a cause of action, but a remedy that is dependent on an actual, legal right to relief.³⁰ And,
 19 here, Wolfson has not raised and valid or sustainable claim and therefore he is not entitled to
 20

21 ²⁴ *Evans v. BAC Home Loans Servicing LP*, No. c10-0656-RSM, 2010 WL 5138394, at *3 (W.D. Wash. 2010)
 22 (“Plaintiffs cannot assert an action to quiet title against a purported lender without demonstrating they have satisfied
 23 their obligations under the Deed of Trust.”).

24 ²⁵ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

25 ²⁶ *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 316, 308 P.3d 716 (2013), *as modified* (Aug. 26, 2013).

26 ²⁷ *Ligon v. JP Morgan Chase Bank*, 2011 WL 2550836 (N.D. Cal. June 27, 2011).

27 ²⁸ *Miller v. NW Trustee Servs., Inc.*, Case No. CV -05-5043-RHW, 2005 WL 1711131, at *3 (E.D. Wash. 2005)
 28 citing *Hulse v. Ocwen Fed. Bank*, 195 F. Supp. 2d 1188, 1204 (D. Or. 2002) (“foreclosing on a trust deed is distinct
 29 from the collection of the obligation to pay money . . . Payment of funds is not the object of the foreclosure action.
 30 Rather, the lender is foreclosing its interest in the property”).

31 ²⁹ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

32 ³⁰ *Bisson v. Bank of America, N.A.*, 919 F. Supp. 2d 1130, 1139-1140 (W.D. Wash. 2013) (“Plaintiffs might have a
 33 claim for declaratory relief if they could properly plead a cause of action that establishes that they have a legal
 34 right” to such relief, “but without such a cause of action, there is no claim for declaratory relief.”).

1 declaratory relief. Plus, he testified that he was unable to point to *any* evidence to support *any* of
 2 his claims.³¹ Consequently, MTC's request to summarily dismiss Wolfson's declaratory
 3 judgment claim should be granted.

4 d. Wolfson's claim of cancellation of instrument fails as a matter of law. Wolfson's
 5 fifth cause of action, cancellation of instruments, is not a model of clarity.³² At its heart,
 6 however, this claim is most generously characterized as a claim for wrongful foreclosure based
 7 on improper foreclosure documents. The Washington Supreme Court was asked by the U.S.
 8 District Court for the Western District of Washington to determine whether state law recognizes
 9 a cause of action for monetary damages where a plaintiff alleges violations of the DTA, Chapter
 10 61.24 RCW, but where no foreclosure sale has been completed.³³ The Supreme Court held that:
 11 "the DTA does not create an independent cause of action for monetary damages based on alleged
 12 violations of its provisions where no foreclosure sale has been completed."³⁴ Here, no
 13 foreclosure sale was completed. And, as mentioned, Wolfson testified that he was unable to
 14 point to *any* evidence to support *any* of his claims.³⁵ Consequently, MTC's request to dismiss
 15 this claim should be granted.

16 e. Wolfson's claim for breach of the implied duty of good faith and fair dealing
 17 claim fail as a matter of law. Under Washington law, "[t]here is in every contract an implied
 18 duty of good faith and fair dealing. This duty obligates the parties to cooperate with each other so
 19 that each may obtain the full benefit of performance."³⁶ Yet, here, Wolfson has failed to identify
 20 the specific duty that MTC had that would support this claim. And he has failed to show how
 21 any alleged duty was breached and proximately caused him damage. Moreover, "the common
 22 law of contracts . . . is inapplicable to nonjudicial foreclosure sales under Washington's Deeds of
 23
 24

25 ³¹ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

26 ³² Complaint, Dkt #36, at 349-57.

27 ³³ *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 422, 334 P.3d 529 (2014).

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1 Trust Act.”³⁷ And, Wolfson testified that he was unable to point to *any* evidence to support *any*
 2 of his claims against MTC.³⁸ Accordingly, the Court should dismiss Wolfson’s implied duty of
 3 good faith and fair dealing claim.

4 f. Wolfson’s claim for violations of Washington Deed of Trusts Act (“DTA”) fails
 5 as a matter of law. As mentioned in section 2.d, above, there is no independent cause of action
 6 for violation of Washington’s DTA. Furthermore, Wolfson testified that he was unable to point
 7 to *any* evidence to support *any* of his claims against MTC.³⁹ Consequently, dismissal of
 8 Wolfson’s claim for violation of the DTA should be dismissed.

9 g. Wolfson’s claim for violation of Washington’s Consumer Protection Act (“CPA”)
 10 fails as a matter of law. A borrower may assert a cause of action under Washington’s Consumer
 11 Protection Act (“CPA”) for alleged violations of Washington’s Deed of Trust Act even in those
 12 instances where a foreclosure was started but a foreclosure sale did not occur.⁴⁰ But when
 13 pursuing a CPA claim based on an alleged Deed of Trust Act violation, the claimant must still
 14 establish all of the traditional elements of a CPA claim.⁴¹ The traditional elements of a CPA
 15 claim are: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that
 16 impacts the public interest; (4) injury to plaintiff’s business or property; and, (5) causation.⁴²
 17 Failure to meet any one of these elements is fatal and necessitates dismissal.⁴³ “Acts performed
 18 in good faith under an arguable interpretation of existing law do not constitute unfair conduct
 19 violative of the consumer protection law.”⁴⁴ In addition, whether an action constitutes an unfair
 20 or deceptive practice is a question of law.⁴⁵

21 _____
 22 ³⁷ *Udall v. T.D. Escrow Servs., Inc.*, 132 Wn. App. 290, 302, 130 P.3d 908, 914 (2006), rev’d on other grounds
 23 by 159 Wn.2d 903, 154 P.3d 882 (2007).

24 ³⁸ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

25 ³⁹ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

26 ⁴⁰ *Frias v. Asset Foreclosure Services, Inc.*, 181 Wn.2d 412, 429, 334 P.3d 529 (2014).

27 ⁴¹ *Frias v. Asset Foreclosure Services, Inc.*, 181 Wn.2d 432.

⁴² *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Col.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

⁴³ *Sorrel v. Eagle Healthcare*, 110 Wn. App. 290, 298, 38 P.3d 1024 (2002). In particular, a CPA claimant must prove that there is a causal link between the alleged misrepresentation or deceptive practice and the purported injury. *Hangman Ridge*, supra. at 793; see also *Cooper’s Mobile Homes, Inc. v. Simmons*, 94 Wn.2d 321, 617 P.2d 415 (1980) (alleged deceptive acts must result in injury).

⁴⁴ *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 155, 930 P.2d 288 (1997).

⁴⁵ *Id.*

1 A CPA claimant must plead and prove that there is a causal link between the alleged
 2 misrepresentation or deceptive practice and the purported injury.⁴⁶ A plaintiff must demonstrate
 3 that the “injury complained of... would not have happened” if not for defendant’s acts.⁴⁷ Here,
 4 not only has Wolfson failed to demonstrate that a “casual link” between the alleged
 5 misrepresentation or deceptive practice and the purported injury, but he testified that he was
 6 unable to point to *any* evidence to support *any* of his claims against MTC.⁴⁸ Wolfson’s CPA
 7 should, therefore, be dismissed.

8 **3. Dismissal of the above-mentioned claims is also warranted under FRCP 12(b)(6).**

9 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
 10 theory or the absence of sufficient facts alleged under a cognizable legal theory.⁴⁹ A complaint
 11 must allege facts to state a claim for relief that is plausible on its face.⁵⁰ A claim has “facial
 12 plausibility” when the party seeking relief “pleads factual content that allows the court to draw
 13 the reasonable inference that the defendant is liable for the misconduct alleged.”⁵¹ Although the
 14 Court must accept as true a complaint’s well-pled facts, conclusory allegations of law and
 15 unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion.⁵² “[A]
 16 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than
 17 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
 18 do. Factual allegations must be enough to raise a right to relief above the speculative level.”⁵³
 19 This requires a plaintiff to plead “more than an unadorned, the-defendant-unlawfully-harmed-me

20

21 ⁴⁶ *Hangman Ridge*, supra. at 793; see also Cooper’s Mobile Homes, Inc. v. Simmons, 94 Wn.2d 321, 617 P.2d 415 (1980) (alleged deceptive acts must result in injury).

22 ⁴⁷ *Indoor Billboard/Washington, Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 82, 170 P.3d 10 (2007).

23 ⁴⁸ See DeLeo Decl., Ex. 1, Wolfson Deposition at 30:22-34:9, 70:19-77:2.

24 ⁴⁹ *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.1990).

25 ⁵⁰ See *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009).

26 ⁵¹ *Id.*

27 ⁵² See, e.g., *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir.2007). See also *Tritz v. U.S. Postal Serv.*, 721 F.3d 1133, 1140 (9th Cir. 2013) cert. denied, 134 S. Ct. 2692, 189 L. Ed. 2d 213 (2014) (noting that “[i]n determining whether plaintiffs can prove facts in support of their claim that would entitle them to relief, we may consider facts contained in documents attached to the complaint”).

28 ⁵³ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citations and footnote omitted).

1 accusation.”⁵⁴ Here, although 40 pages in length and 412 paragraphs, Wolfson’s Complaint fails
 2 to state a claim against any defendant on which relief can be granted. Thus, Defendants
 3 Intercontinental Exchange, Inc., Maroon Holding, LLC, BANA, Merscorp Holdings, Inc., and
 4 Mortgage Electronic Registration Systems, Inc.’s filed motions to dismiss.⁵⁵ The Court
 5 dismissed all of Wolfson’s claims against Intercontinental Exchange, Inc., and Maroon Holding,
 6 LLC.⁵⁶ Furthermore, the Court dismissed Wolfson’s claims for declaratory judgment,
 7 cancellation of instrument, breach of the implied duty of good faith and fair dealing, violations of
 8 the DTA, violations of the CPA, quite title action, and FDCA (collectively the “Dismissed
 9 Claims”) against BANA.⁵⁷ Consequently, Wolfson’s only remaining claims, including the
 10 claims against MTC, are a claim for defamation against BANA and a claim of replevin against
 11 BANA and MERS.⁵⁸

12 As the other defendants, Wolfson failed to adequately plead claims for declaratory
 13 judgment, cancellation of instrument, breach of the implied duty of good faith and fair dealing,
 14 violations of the DTA, violations of the CPA, quite title action, and FDCA (collectively the
 15 “Dismissed Claims”) against MTC. The Dismissed Claims have the same fatal flaws with regard
 16 to MTC as they did with BANA.⁵⁹ And that alone is sufficient to dismiss those claims against
 17 MTC. But, additionally, as mentioned above, since the Court’s ruling on the motions to dismiss,
 18 the deposition of Wolfson was held. Wolfson’s deposition testimony conclusively establishes a
 19 complete lack of evidence to support any of his claims. Consequently, all of the Dismissed
 20 Claims should be dismissed as to MTC based on Wolfson’s failure to state a claim pursuant to
 21 Fed. R. Civ. P. 12(b)(6) and pursuant to Fed. R. Civ. P. 56(a). due to Wolfson’s failure to present
 22 any evidence whatsoever to support any claim.

23

24

25 ⁵⁴ *Iqbal*, 129 S.Ct. at 1949 (citing *Twombly*).

26 ⁵⁵ Dkt #39 and #14.

27 ⁵⁶ Dkt #52.

⁵⁷ *Id.*

⁵⁸ See Dkt #52, page 10.

⁵⁹ See Dkt #52.

1 **4. Wolfson's claim for Defamation and Replevin should also be dismissed.**

2 a. Wolfson's Defamation claim fails as a matter of law. To state a claim for
 3 defamation, the plaintiff must allege (1) that the defendant's statement was false, (2) that the
 4 statement was unprivileged, (3) that the defendant was at fault, and (4) that the statement
 5 proximately caused damages.⁶⁰ Wolfson appears to base his defamation claims against MTC
 6 upon an alleged falsity contained in the Notice of Trustee's Sale.⁶¹ However, Wolfson fails to
 7 establish that he did not default. In fact, this Court has previously concluded that Wolfson "fails
 8 to alleged he has paid the loan and is in peaceful possession of the property."⁶² In his deposition,
 9 Wolfson was unable to provide evidence establishing peaceful possession of the Property and he
 10 did not have evidence showing that he made all payments required under the Note.⁶³
 11 Accordingly, Wolfson is unable to demonstrate a genuine issue of material fact with regard to the
 12 essential element of falsity for his defamation claim.

13 Additionally, Wolfson alleges the Notice of Trustee's Sale somehow defamed him.
 14 However, Wolfson fails to allege that MTC failed to follow the requisites required by
 15 Washington's DTA for a trustee's sale.⁶⁴ As a result, Wolfson cannot establish that MTC's
 16 Notice of Trustee's Sale was unprivileged or that MTC was at-fault.

17 Finally, Wolfson makes unsupported claims with regard to the alleged damages caused
 18 by the Notice of Trustee's Sale.⁶⁵ Yet, these mere unsupported conclusory allegations and
 19 insufficient to establish a claim. Plus, Wolfson's defamation claim fails on the other essential
 20 elements discussed above. In particular, there is no evidence of falsity. Further, Wolfson
 21 testified that he was unable to identify any way in which he was damaged by the alleged

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 24 ⁶⁰ *Alpine Indus. Computers, Inc. v. Cowles Pub. Co.*, 114 Wn. App. 371, 378 (2002) (citing *Caruso v. Local Union*
 25 *No. 690*, 107 Wn.2d 524, 529 (1987)).

26 ⁶¹ Dkt #36, ¶ 315-319.

27 ⁶² Dkt #52, pg. 7.

28 ⁶³ DeLeo Decl., Ex. 1, Wolfson Deposition at 15:24-16:4, 19:18-20:10, 27:25-28:19, 57:15-57:24, 64:12-64:14.

29 ⁶⁴ See RCW 61.24.030.

30 ⁶⁵ Dkt #36, ¶ 317-319.

defamation.⁶⁶ As a result, Wolfson has failed to establish the essential elements of his defamatory claim, and therefore Wolfson's claim should be dismissed.

b. Wolfson's Replevin claim fails as a matter of law. Black's Law Dictionary defines replevin as “[a]n action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds the property until the court decides who owns it.⁶⁷ In this case, it is not alleged that MTC took or detained Wolfson's personal property. As a result, Wolfson's claim for replevin with regard to MTC should be dismissed. Further, Wolfson's own testimony contradicts his claim for replevin. Wolfson testified that he was uncertain if he believed that the Note was his personal property and if he owned the Note.⁶⁸ Wolfson—again—is unable to identify any evidence demonstrating that he owned the Note, paid off the Note, or otherwise supporting his claim against MTC for replevin.⁶⁹ Thus, his claim for replevin should be dismissed as a matter of law.

VI. CONCLUSION

Wolfson has failed to adequately plead his claims against MTC. Furthermore, Wolfson is unable to provide any evidence to support his claims because none exists. Thus, as a matter of law, all of Wolfson's claims should be dismissed with prejudice.

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⁶⁶ DeLeo Decl., Ex. 1, Wolfson Deposition at 70:19-73:22.

⁶⁷ REPLEVIN, Black's Law Dictionary (10th ed. 2014).

⁶⁸ DeLeo Decl., Ex. 1, Wolfson Deposition at 73:22-74:19.

69 *Id.*